

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 23-1126V

DANIEL MITCHELL,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: September 12, 2024

Jubaile Abila, Groth Law Firm, Wauwatosa, WI, for Petitioner.

Neil Bhargava, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON DAMAGES¹

On July 20, 2023, Daniel Mitchell filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*¹ (the “Vaccine Act”). Petitioner alleged that he suffered a Table shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza (“flu”) vaccine which he received on October 8, 2021. Petition at 3. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On July 29, 2024, a Ruling on Entitlement was issued, finding Petitioner entitled to compensation for a SIRVA. On September 11, 2024, Respondent filed a Proffer on award of compensation (“Proffer”). Respondent represented that Petitioner agrees with the proffered award. *Id.* at 1 – 2. Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the Proffer, I award the following compensation:

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

A lump sum of \$100,000.00 (for pain and suffering) in the form of a check payable to Petitioner. Proffer at 1 – 2. This amount represents compensation for all damages that would be available under Section 15(a). *Id.*

The Clerk of Court is directed to enter judgment in accordance with this decision.²

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

² Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

DANIEL MITCHELL,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 23-1126V (ECF)
Chief Special Master Corcoran

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On July 20, 2023, Daniel Mitchell (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, as amended (“the Vaccine Act” or “the Act”), 42 U.S.C. §§ 300aa-1 to -34, alleging that he suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza vaccine that he received on October 8, 2021. ECF No. 1 at 1. On July 25, 2024, respondent filed a Rule 4(c) Report, recommending that compensation be awarded. ECF No. 21. On July 29, 2024, Chief Special Master Corcoran issued a Ruling on Entitlement, agreeing with respondent that petitioner’s claim meets the Table criteria for SIRVA. ECF No. 23.

I. Items of Compensation

Respondent proffers that petitioner should be awarded **\$100,000.00** in pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

This amount represents all elements of compensation to which petitioner is entitled under 42 U.S.C. §300aa-15(a). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following:¹

- a. A lump sum payment of **\$100,000.00**, in the form of a check payable to petitioner.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

TRACI. R. PATTON
Assistant Director
Torts Branch, Civil Division

/s/ Neil Bhargava
NEIL BHARGAVA
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Ben Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 305-3989
Email: neil.bhargava@usdoj.gov

Dated: September 11, 2024

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.